

JURISDICTION OVER PRIZES

*Exchange of notes at Canberra November 10, 1942, and May 10, 1944
Entered into force August 12, 1944
Applicable only during World War II*

58 Stat. 1390; Executive Agreement Series 417

The American Minister to the Minister of State for External Affairs

LEGATION OF THE
UNITED STATES OF AMERICA
*Canberra, A.C.T.
November 10, 1942.*

SIR:

I have the honor to refer to my note of February 19, 1942 and to the reply of May 29 of the then Acting Minister for External Affairs, the Right Honorable John Curtin, relating to the question of changing the present procedure with respect to prizes taken by the United States naval forces in foreign waters remote from ports of the United States.

I am now in receipt of instructions from the Department of State amplifying the information contained in my note of February 19.

Public Law 704—77th Congress, an Act to facilitate the disposition of prizes captured by the United States during the present war, and for other purposes was approved on August 18, 1942.¹ A copy of the Act is enclosed.

It will be perceived that the Act relates only to prizes captured during the present war, a matter raised in the note from the Acting Minister for External Affairs. It may be added concerning the other matter inquired about that the special prize commissioners which the district courts of the United States are authorized to appoint may exercise abroad the duties which are prescribed by law for such commissioners and such additional duties as the district courts may confer on them for carrying out the purposes of the Act. The duties of prize commissioners are set out in Title 34 U.S.C. Section 1138 which reads as follows:

“§ 1138. Duties of prize commissioners. The prize commissioners, or one of them, shall receive from the prize master the documents and papers, and

¹ 56 Stat. 746.

inventory thereof, and shall take the affidavit of the prize master required by section 1134 of this title, and shall forthwith take the testimony of the witnesses sent in, separate from each other, on interrogatories prescribed by the court, in the manner usual in prize courts; and the witnesses shall not be permitted to see the interrogatories, documents, or papers, or to consult with counsel, or with any persons interested without special authority from the court; and witnesses who have the rights of neutrals shall be discharged as soon as practicable. The prize commissioners shall also take depositions *de bene esse* of the prize crew and others, at the request of the district attorney, on interrogatories prescribed by the court. They shall also, as soon as any prize property comes within the district for adjudication, examine the same, and make an inventory thereof, founded on an actual examination, and report to the court whether any part of it is in a condition requiring immediate sale for the interests of all parties, and notify the district attorney thereof; and if it be necessary to the examination or making of the inventory that the cargo be unladen, they shall apply to the court for an order to the marshal to unlade the same, and shall, from time to time, report to the court anything relating to the condition of the property, or its custody or disposal, which may require any action by the court, but the custody of the property shall be in the marshal only. They shall also seasonably return into court, sealed and secured from inspection, the documents and papers which shall come to their hands, duly scheduled and numbered, and the other preparatory evidence, and the evidence taken *de bene esse*, and their own inventory of the prize property; and if the captured vessel, or any of its cargo or stores, are such as in their judgment may be useful to the United States in war, they shall report the same to the Secretary of the Navy."

It will be noted that according to the terms of Section 3 of the above-mentioned Public Law 704 "the jurisdiction of prizes brought into the territorial waters of a cobelligerent shall not be exercised under authority of this Act nor shall prizes be taken or appropriated within such territorial waters for the use of the United States unless the Government having jurisdiction over such territorial waters consents to the exercise of such jurisdiction or to such taking or appropriation." Section 7 of that Act states:

"A cobelligerent of the United States which consents to the exercise of the jurisdiction herein conferred with respect to prizes of the United States brought into its territorial waters and to the taking or appropriation of such prizes within its territorial waters for the use of the United States shall be accorded, upon proclamation by the President of the United States,² like privileges with respect to prizes captured under authority of such cobelligerent and brought into the territorial waters of the United States or taken or appropriated in the territorial waters of the United States for the use

² For text of proclamation dated Aug. 12, 1944, see 58 Stat. 1146.

of such cobelligerent. Reciprocal recognition and full faith and credit shall be given to the jurisdiction acquired by courts of a cobelligerent hereunder and to all proceedings had or judgments rendered in exercise of such jurisdiction."

In consideration of the provisions of Section 3, I should be grateful if you would inform me at the earliest possible date whether the Commonwealth Government would consent to the exercise of the proposed jurisdiction or to the taking or appropriation of prizes as therein mentioned. This procedure is proposed on a basis of reciprocity under the terms of Section 7 of the Act.

Accept, Sir, the renewed assurance of my highest consideration.

NELSON TRUSLER JOHNSON

Enclosure:
Public Law 704.

The Right Honorable
HERBERT VERE EVATT,
Minister for External Affairs,
Canberra, A.C.T.

The Minister of State for External Affairs to the American Minister

DEPARTMENT OF EXTERNAL AFFAIRS,
CANBERRA, A.C.T.
10th May, 1944.

SIR,

I have the honour to refer to your note of 10th November, 1942, relating to the question of changing the present procedure with respect to prizes taken by the United States Naval Forces in foreign waters remote from ports of the United States.

2. I note that Public Law 704—77th Congress, an Act to facilitate the disposition of prizes captured by the United States and for other purposes, was approved on 18th August, 1942, and that this Act relates only to prizes captured during the present war. It is also perceived that according to the terms of Section 3 of the abovementioned Public Law, "the jurisdiction of prizes brought into the territorial waters of a co-belligerent shall not be exercised under authority of this Act nor shall prizes be taken or appropriated within such territorial waters for the use of the United States unless the Government having jurisdiction over such territorial waters consents to the exercise of such jurisdiction or to such taking or appropriation".

3. I now have the honour to advise that the Australian Government is pleased to convey to the Government of the United States of America the consent requested in the terms of Section 3 referred to above, on a basis of reciprocity as stated in Section 7 of the Act.

I have the honour to be, With the highest consideration, Sir,
Your most obedient servant,

H. V. EVATT,
*Minister of State
for External Affairs.*

The Honourable
NELSON TRUSLER JOHNSON,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America,
American Legation,
Canberra.*